IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.4474 OF 1991

Chabu Punja More ..Petitioner

V/s.

Ashpak Abdul Razzak Shaikh ..Respondent

Mr.Prafulla B.Shah, advocate for petitioner

Mr.G.B.Karandikar, advocate for respondent

Coram : D.G.Deshpande,J.

Date : 16th October, 2006

P.C.

1. Heard advocate for the petitioner and respondent. Petitioner is the owner of Survey No.118 and respondent is the owner of Survey No.117. The respondent had claimed a right of way through the field of the petitioner by applying to the Tahsildar under Section 5 of the Mamlatdar's Court Act. Parties adduced oral as well as documentary evidence. The spot was inspected and thereafter, Tahsildar allowed the application of the respondent regarding grant of way. Then matter

went to S.D.O.in appeal at the instance of the petitioner. He has also appointed Commissioner and after perusal of the record and evidence, dismissed the appeal. Hence, this petition.

2. The counsel for the petitioner raised two contentions. Firstly, according to him, two months before granting right of way to the respondent, the Tahsildar had rejected similar prayer through the said Survey Number of one Bhaga Yashwant Mote. Therefore, according to him, if right of way is denied to Ashpak A.Razzak Shaikh then it should have been denied to the respondent. I do not find any substance in the said submission. Right of way is an individual and personal right and hence merely because one person like Bhaga failed to establish his right of way through the land of the petitioner. It does not necessarily mean that the respondent in the present petition should have been denied right of way. Each case needs to be decided on its own merit.

3. The second contention of the advocate for

the petitioner was that when S.D.O. has appointed Commissioner, the Commissioner also recorded statements of adjoining owners in this regard and all of them show that respondent has no right of way. This contention cannot also be accepted because Commissioner is supposed to inspect the spot & not record the evidence in absence of specific directions in that regard. If he was appointed for spot inspection, he has to inspect the spot and submit his report. If he is appointed to examine witnesses then other side has to be given an opportunity to cross examine those witnesses. Nothing is done in that regard. Therefore, statements recorded by the Commissioner are of no use.

4. Both the Courts have rightly given findings. There is no perverse. Therfore, petition is dismissed. Rule discharged. No order as to costs. The prayer for continuation of relief is rejected because right of way is absolute necessity for cultivator.

(D.G.Deshpande,J.)